IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SHANNON MURRAY
Claimant

JBM INC
BLUEGRASS SATELLITE
Employer

APPEAL NO. 08A-UI-10780-LT

ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/12/08   R: 04
Claimant: Appellant (2R)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on December 3, 2008. Claimant participated. Employer participated through Roxanne Caulkins and Stephanie Lee. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time installation technician and remained employed until October 2, 2008 when he quit. His last day of work was July 31, 2008 when he went on medical leave. Family Medical Leave Act (FMLA) leave was denied on September 17 but there was no deadline given for providing additional medical information or returning to work. Randall Mullins, M.D. advised claimant on September 29, 2008 that he was unable to return to work due to disabling anxiety. (Claimant's Exhibit A) That document was forwarded to employer and received on October 2, 2008, at which time employer officially terminated the employment relationship.

Claimant's next appointment with his treating physician is December 11, 2008. The administrative law judge has asked him to obtain information from Dr. Mullins about his medical ability to work in light of his education, training and work history as of October 12, 2008 and present that information to the fact-finder for the remanded interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment for no disqualifying reason.

Iowa Code § 96.5-1-d provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) provides:

> Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
>
> (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:
>
> (a) Obtain the advice of a licensed and practicing physician;
>
> (b) Obtain certification of release for work from a licensed and practicing physician;
>
> (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
>
> (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant has not established that the injury was caused by the employment but did establish that the medical condition would be aggravated by the work duties, which are permanently prohibited by the medical restrictions. Furthermore, the treating physician specifically advised claimant not to return to work.

While a claimant must generally return to offer services upon recovery, subparagraph (d) of Iowa Code § 96.5(1) is not applicable where it is impossible to return to the former employment because of medical restrictions connected with the work. See *White v. EAB*, 487 N.W.2d 342 (Iowa 1992). Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. *Shontz v. IESC*, 248 N.W.2d 88 (Iowa 1976). Where illness or disease directly connected to the employment make it impossible for an individual to continue in employment because of serious danger to health, termination of employment for that reason is involuntary and for good cause attributable to the employer even

if the employer is free from all negligence or wrongdoing. *Raffety v. IESC,* 76 N.W.2d 787 (Iowa 1956).

Because claimant's medical condition was aggravated by the working conditions, the decision not to return to the employment according to his physician's advice was not a disqualifying reason for the separation.

DECISION:

The November 5, 2008, reference 01, decision is reversed. The claimant voluntarily left his employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The ability to work issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs